

# TODILTO

## EXPLORATION AND DEVELOPMENT CORPORATION

November 13, 1991

G. WARNOCK  
PRESIDENT

Mr. Robert Bornstein  
EPA  
75 Hawthorne Street  
San Francisco, CA 94105

Dear Bob:

I wanted to take advantage of copying you with Todilto's reply to the DOE attached to also reply to your letter of September 15, 1991. I'll address it point for point.

In your opening paragraph you reiterate your position that Todilto is a PRP (Potentially Responsible Party) on sections 19 and 13. Per our reply to the General Notice letter, Todilto did not mine on section 19 and thus, is not a PRP for that section. In the case of section 13, which was specifically excluded from the letter, Todilto owned, operated and maintained the property and is clearly a PRP on that section, along with the DOE, who own the underlying mineral rights.

Your second paragraph is extremely illuminating of the "God like" approach of the EPA. Please be aware that just because the EPA says it "has determined..." does not automatically make the EPA absolutely correct in it's assessment of the situation. The DOE has agreed that your field measurements for gamma and airborne radon exhaust can not be reproduced! Would you like me to send back additional copies of your sketch maps with no scales, miss-oriented, everything on them miss-located and the readings absolutely unreproducible. Having been in the mining business now for some 35 years, you can be assured that I would have fired any junior engineer that had the nerve to turn in such "maps" to me. They are in both the DOE and Todilto files. Do you deny they exist?

Replying to your numbered paragraphs:

(1) The PRP question is answered above.

(2) Based on Todilto's professional gamma survey of the areas involved sent to the DOE and which I'm sure you have copies of, we agree with you that a rare 750 uR/hr. or higher reading exists on the property. Your reply, however, completely begs the point that we made in our reply that there does not exist a human or animal usage pattern on any part of the property that can constitute a health hazard. Your own criteria indicate the 165 uR/hr. limit per your memo dated July 5, 1991. Then you say "ERS has estimated that the local population spends approximately 2 hours a day in areas affected by the mining operations for 300 days out of the year."

This statement is simply false. We demonstrated this to you in our original reply dated July 30, 1991 to the General Notice letter containing the usage history and our recent one month observation. You apparently choose to ignore this data, replying with the general statement that the land is ".....primarily used as grazing lands for local sheep, goats and horses." Doesn't it somehow bother you to make such statements, when the truth is otherwise as we have demonstrated.

Secondly, may I ask you specifically if you have resurveyed the exhaust from the three existing mine workings. As you are aware the DOE is still insisting that these three openings be permanently closed based on EPA's demand that they be. I'm sure you have seen Todilto's survey of these openings indicating that no emissions above background are measurable at waist height on any of them. To permanently seal these opening will be a taking of Todilto's leasehold rights and any reasonable engineering or scientific approach demands that you prove your contention before Todilto's asset is forever taken away from it without compensation.

While the old ore stockpile area is one of those areas that has reading over 165 uR/hr., it is easily remedied by simply covering as you did the high areas on sections 18, 19 and 24. Why must the material be put back in the portal forever making the mine inaccessible? What is the problem with simply covering it as with the above sections?

Todilto's survey on the mine dump ( their obviously are no "tailings" anywhere on the property) show no waist high readings over 165uR/hr. anywhere on the dump. If you have new surveys indicating otherwise, please let us evaluate them.

(3) If the EPA has conducted further "50 foot by 50 foot grid" surveys on some areas, why don't you just supply us with copies so we can make our own determinations, rather than again playing God and simply saying a problem exists without showing the surveys? You are now emphasizing that "exceeded background levels by as much as a factor of 50." Of course, the background of 15 uR/hr. times 50 is the 750uR/hr. that we have agreed exists in isolated spots. What's the point? Would you like to infer the whole area exceeds 50 times background. You must know that is not true. Why don't you tell the truth and say a few isolated spots on the property exceed 50 times background!

(4) Our 90,000 rem./yr. was based on your calculation in your memo of July 5, 1991 and was admittedly labeled wrong. We were trying to make the point that the usage is low (1 day per month) and would have better stated it as follows: 150uR/hr. X 12 days X 1 hour = 1,800 uR/yr. or 1.8mR/yr., essentially negligible due to such low usage.

(5) The EPA has yet to prove that its response was based on "findings of fact combined with scientific risk estimates" that are valid. In fact, Brown, through his daughter and before realizing that not only section 19 bordering him and upon which his current house sits would be involved, specifically told me that he had gone to the BIA claiming his current house was "poisoned" specifically because he thought someone would build him a new one. While hopefully no one will, that doesn't change the fact that the BIA and subsequently, the EPA were drawn to the area by Mr. Brown's connivance. Once there, and apparently prodded by the BIA, the EPA apparently decided based on either a very bad initial survey or, perhaps a "make work" philosophy to proceed.

In closing, I hope I've answered all the points in your letter of September 15th. "ERS" Emergency Response Section. That's an interesting concept. To the layman the name would seem to imply a group prepared to respond to just happened major spills of hazardous material on an emergency basis. Are you aware that section 18 & 19 were last mined in the early 1950's and section 13 closed in 1981 - ten years ago? Why was this an emergency response situation since the conditions had existed for 10 to 30 years? Surely, under these circumstances and particularly since you are not going to build Brown a new house anyway, there would have been time to run careful, well documented engineering surveys over the properties that all parties involved could agree represented the true condition of these areas. Based on such surveys, I'm sure Todilto, Santa Fe, the DOE and EPA could have arrived at a more considered action than the EPA dictating an emergency response based on their "we know best" attitude which factually, as above, is in error in this specific case.

Sincerely,



GW/gbr

EPAHAY2.LTR

c/ Senator Pete Domenici

Bob Ivey, DOE

C. Freytag, DOE